doubtedly made between an adverse possessor who holds under a paramount title and one who does not. If his right is complete at the time of the grant, it is generally held that this constitutes sufficient eviction to support an action for breach of the covenant. *Moore* v. *Vail*, 17 Ill. 185. But if the grantor has the paramount title a mere tortious adverse possession is not a breach of warranty. *Noonan* v. *Lee*, 2 Black (U. S.) 499.

DAMAGES — MEASURE OF DAMAGES — TROVER FOR CONVERSION OF GOODS IN TRANSIT. — The defendant, at Buffalo, seized certain horses shipped by the plaintiff from Chicago to Liverpool. The plaintiff brought trover for the conversion. *Held*, that the plaintiff may recover the market value of the horses at Liverpool less the cost of carriage and of effecting a sale there. *Wallingford* v. *Kaiser*, 191 N. Y. 392.

The general measure of damages in trover is the market value of the property at the time and place of conversion, with interest. *Spicer* v. *Waters*, 65 Barb. (N. Y.) 227. Where, however, a common carrier converts goods delivered for transportation, the universal rule is that the carrier is liable for the value of the goods at the place of destination. *Sturgess* v. *Bissell*, 46 N. Y. 462. But this rule of liability is based on the carrier's breach of either his common law or his contractual duty to deliver, and not on the mere conversion. To allow the plaintiff to recover in trover for his loss of profits is to allow him consequential damages, since his only direct loss is the loss of his property at the time and place of conversion. In this country it seems to be generally held that consequential damages are not recoverable in actions of trover. *Seymour* v. *Ives*, 46 Conn. 109. And the same is true in England unless special damage is alleged and proved. *Bodley* v. *Reynolds*, 8 Q. B. 779.

DEDICATION — RESTRICTIONS ON DEDICATION — LIMITATIONS IN AN IMPLIED DEDICATION. — A steam railroad constructed a crossing over its right of way, which was owned in fee. After the public had used it as an ordinary street for several years the railroad sought to enjoin a street railroad from using the crossing. *Held*, that the railroad is not entitled to the injunction. *Michigan Central R. Co.* v. *Hammond, W. & E. C. Elec. Ry. Co.*, 83 N. E. 650 (Ind., App. Ct.).

The operation of a street railroad is an ordinary use of a public street and is not an additional burden on the easement. *Taggart* v. *Newport St. Ry. Co.*, 16 R. I. 668. When a steam railroad obtains a right of way across a public street, it does so subject to the easement of the general public to use the street and therefore cannot object to its tracks being crossed by those of a street railroad. *Chicago, etc., Ry. Co.* v. *Whiting*, 139 Ind. 297; *C., B. & Q. R. R. Co.* v. *West Chicago St. R. R. Co.*, 156 Ill. 255. In the present case the public obtained the street by the implied dedication of the railroad, and it was argued that the dedication was limited to the easement of a foot and carriage way. If such a restricted dedication were made by deed or writing, it might be sustained, although to allow such restrictions seems contrary to sound public policy. See 21 HARV. L. REV. 356. To go further, allowing the dedicator to impose limitations on the apparent scope of his dedication by showing his intent, would be confusing and unjustifiable. When, as in this case, the evidence shows that a highway has been dedicated, all the customary uses of a highway are proper. *South East, etc., Ry. Co.* v. *Evansville, etc., Ry. Co.*, 82 N. E. 765 (Ind.).

EASEMENTS — PRESCRIPTION — INTERRUPTION BY INCREASING BURDEN. — The defendant erected and operated a two-track elevated railroad for seventeen years. It then erected a third track between the two on the same supports, and maintained it for five years. The plaintiff, an abutting owner, sued for interference with his easements of light, air, and access. *Held*, that the defendant has not acquired a prescriptive right to maintain the original tracks. *Roosevelt* v. *N. Y. El. R. R. Co.*, 38 N. Y. L. J. 2515 (N. Y., Sup. Ct., March, 1908).

The fact that the defendant's charter contains a provision for compensation of abutting owners does not prevent its user from being adverse. *Lehigh Valley R. R. Co.* v. *McFarlan*, 43 N. J. L. 605. The whole question therefore is

whether the addition of the third track is an interruption of the user. The test is whether the old user is radically different from, or whether it is merely a divisible fraction of, the new. *A. B. N. Co.* v. *N. Y. El. R. R. Co.*, 129 N. Y. 252. Thus the deepening and enlarging of a drain is an interruption. *Cotton* v. *Pocasset Mfg. Co.*, 54 Mass. 429. But a mere increase in the amount of drainage is not. *Shaughnessey* v. *Leary*, 162 Mass. 108. Where an elevated cable road is changed into an electric road, and the supports are moved and strengthened, there is properly held to be an interruption in the user. *A. B. N. Co.* v. *N. Y. El. R. R. Co.*, *supra*. But in the principal case the old user remains a distinct and divisible part of the new. Therefore it would seem that the court is wrong in holding that the defendant acquired no prescriptive right to maintain the two tracks.

ELECTIONS — CONSTITUTIONALITY OF PRIMARY ELECTION ACTS. — An act provided that a political party which polled over ten per cent of the votes cast at the last preceding election might have primary elections at public expense to elect delegates to the state nominating convention or to choose party candidates for election. *Held*, that the act is constitutional. *State* v. *Felton*, 84 N. E. 85 (Oh.). See NOTES, p. 622.

EQUITABLE CONVERSION — WHETHER SURPLUS PROCEEDS OF SALE OF LAND BY COURT DESCENDS AS REALTY OR PERSONALTY. — On A's death B became entitled to certain land. This land was subsequently sold by order of the court for the payment of the costs of settling the estate. After the sale B died intestate. *Held*, that the surplus resulting from the sale goes to B's heirs. *Burgess* v. *Booth*, 124 L. T. 503 (Eng., Ch. D., March, 1908).

When an intestate's land is sold for a particular purpose, the surplus undoubtedly goes to the heir. *Dixon* v. *Dawson*, 2 Sim. & St. 327. If the heir dies before the sale, the land of course, descends to his heir, who should also be entitled to the surplus. See 18 HARV. L. REV. 1, 4. But if the heir dies after the sale, the surplus, by the weight of authority, goes to his personal representative, since, the deceased not being the owner of realty at the time of his death, there is nothing to descend to the heir. *Graham* v. *Dickinson*, 3 Barb. (N. Y.) 169. The same principles, of course, apply when the title to the land passes by will. The present case relies upon a holding that a surplus from a mortgage foreclosure during the life of the mortgagor goes to his heir. *Scott* v. *Scott*, 9 L. R. Ir. 367. But by the better view the same distinction should be made in such cases. Thus it has been held that whether the heir or personal representative takes the surplus depends upon whether the mortgagor died before or after the foreclosure. *Wright* v. *Rose*, 2 Sim. & St. 323; see 18 HARV. L. REV. 1, 7. The present case therefore seems unsound on principle, and, further, there is direct English authority opposed to its conclusion. *Smith* v. *Claxton*, 4 Madd. 484.

FEDERAL COURTS — JURISDICTION BASED ON DIVERSITY OF CITIZENSHIP — WAIVER OF JURISDICTIONAL DEFECT. — The plaintiff sued the defendant in a court of a state in which neither was a resident. The defendant had the case removed to the United States circuit court on the ground of diversity of citizenship. There the plaintiff filed an amended petition. After several continuances entered into by both parties, the plaintiff moved to remand the case to the state court on the ground that neither party was a resident of the district. *Held*, that the plaintiff, by recognizing the jurisdiction of the court, waived objection thereto. *In re Moore*, U. S. Sup. Ct., April 20, 1908.

The constitutional requirement of diversity of citizenship as a ground of federal jurisdiction cannot be waived by the parties, and the court may of its own motion remand a case for want of jurisdiction. *Great Southern, etc., Co.* v. *Jones*, 177 U. S. 449. On the other hand it is well settled that the statutory requirement that a suit, originally instituted in a federal court and properly within federal jurisdiction, must be brought in the district of the residence of one of the parties, confers a personal privilege which may be waived. *Central Trust Co.* v. *McGeorge*, 151 U. S. 129. The similar requirement in case of the